reporting of intelligence failures or abuses. The statement of the managers in the conference report on H.R. 4 expressly embraced this interpretation. However, saying it does not make it so. There is nothing on the face of this provision which codifies such a limitation. In a September 1980 letter to the Judiciary Committee, another University of Chicago professor of law, Geoffrey R. Stone, pointed out that:

> . . . [A]s drafted, . . . [this provision] relies soley upon the "pattern of activities" clause to limit the bill's scope. This is inadequate. The clause is ambiguous and is subject to easy manipulation. Moreover, it might (and probably would) cover a newspaper or other publication that made a regular practice of investigating undercover activities in order to expose abuse.

Professor Stone went on to conclude, as did his colleague Professor Kurland, that a malicious intent standard is "essential if the legislation is to comport with the First Amendment."

I am deeply saddened that the Senate has foresaken the opportunity to codify its desire not to infringe upon the exercise of press freedom. Neither the press nor any member of this body can or should take any comfort in seeingly benign interpretations of section 601(c) offered by its proponents and the conferees. Indeed, the Senate voted down an amendment offered by the Senator from New Jersey (Senator BRADLEY) which would have codified one such interpretation. Moreover, the arm of Government which will be responsible for enforcing this law has given every indication that it will not apply the law benignly.

During congressional consideration of this legislation, the Justice Department spokesman plainly stated that the language of section 601(c) would be construed to minimize the possibility of a successful defense based on a claim that a disclosure of an agent's name was intended to inform the public about wrongdoing or abuse by intelligence agencies. He stated that this provision would permit prosecution of someone who was merely "negligent" in overlooking the adverse consequences of his disclosure on intelligence activities. Asked how this provision would apply to a journalist who engages for 3 years in a pattern of activity intended to identify double agents or moles in the CIA and writes articles naming such agents, the spokesman acknowledged that this hypothetical at least raises a "question" whether a crime would be committed.

Do we want journalists to be at risk of prosecution and conviction if they reveal covert agents' names in order to expose misconduct such as occurred in the news stories on the Wilson-Terpil affair? Do we want to put a newsman in jail for negligent conduct? Every Member of this body most assuredly would answer "no." But where are the words in the statute that permit the journalist to predetermine that the exercise of his first amendment rights will not constitute a crime in the eyes of the Government? The answer is simply that there are none.

By failing to differentiate between protected first amendment activity and conduct which properly may be made criminal, section 601(c) forces a journalist, at his peril, to speculate as to whether the disclosure of certain information would constitute a violation. The risk which proceeds from the uncertainty in the statutory language is the very essence of a "chilling effect." "Due process" requires fair notice or warning. This requirement is greatest when first amendment values are at stake. Legitimate legislative goals cannot, according to the Supreme Court, "be pursued by means that broadly stifle fundamental person liberties when the end can be more narrowly achieved." *Shelton* v. *Tucker*, 364 U.S. 478,488 (1960). The Court has also said:

> It has long been recognized that the First Amendment needs breathing space and that statutes attempting to restrict or burden the exercise of First Amendment rights must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has given way to other compelling needs of society. *Broadrick* v. *Oklahoma*, 413 U.S. 601,607 (1972).

I regret that this distinguished body has departed from these principles in passing H.R. 4. This bill does not take the narrower path. Nor does it allow the press the breathing space that is so vital to its effectiveness.

In closing, Mr. President, I must admit that I did consider the possibility of voting for passage on the theory that the judicial branch would save us from mischief that might be done in the enforcement of section 601(c). I suspect that many of my colleagues have predicated their "aye" votes on just this rationale. However, I think we serve the Republic best when we are mindful of the teaching of Justice Oliver Wendell Homes that "legislatures are ultimately guardians of the liberties and welfare of the people in quite as great a degree as the courts."

Mr. LEAHY. Mr. President, the Senate is about to finish one of the most difficult tasks which it has undertaken in the last several years. We have been called upon to strike a careful balance between the very real needs of the men and women who are serving our country in the intelligence services and the stringent dictates of the first amendment.

We have before us a conference report which, I believe, strikes that balance in a proper and constitutional way. The debate over this bill has always been a debate over a handful of words. But this handful of words have the most important implications for a free press and free speech in this country of any I have debated since I have been in the Senate.

The joint explanatory statement of the Committee on Conference provides the crucial piece of legislative history which underscores the Congress commitment to preserving legitimate first amendment rights. As the conference report notes, both those who argued for the "reason to believe" language, as well as those of us who argued for the intent standard, sought to proscribe the same scope of conduct. Both sides were seeking to reach only those individuals engaged in the business of "naming names," the intentional "blowing" of cover. The conference report makes clear that Congress did not intend to invade the province of legitimate commentary by newspapers or scholars.

The focus of the report concerns section 601(c) of the bill. Section 601(c) established three elements of proof not found in section 601(a) or (b). The United States must prove: First, that the disclosure was made in the course of a pattern of activities, that is, a series of acts having a common purpose or objective; second, that the pattern of activities was intended to identify and expose covert agents; and third, that there was reason to believe that such activities would impair or impede the foreign intelligence activities of the United States.

The conference report makes quite clear that the Government must prove that the defendant engaged in a pattern of activities both intended to identify and intended to expose a covert agent. In my view, it is the latter element which limits the reach of this bill to those individuals not engaged in legitimate first amendment activity. The process of exposing covert agents must involve the deliberate exposure of information identifying the agents. In other words, it must involve the intentional "blowing" of intelligence identities. As the Judiciary Committee report states, this intentional "blowing of cover" implies a design to neutralize a covert agent or to damage an intelligence agency's ability to carry out its functions.

The conference report, thus, narrows the scope of coverage of section 601(c), and, I trust, the courts will seize upon this report to give a narrow, constitutional construction to this act.

Finally, I want to commend my distinguished colleagues, Senator CHAFEE and Senator BIDEN, as well as their staffs, for the countless hours they have devoted to this vital legislation.

Mr. CRANSTON. Mr. President, I want to express my deep appreciation to the distinguished Senator from Rhode Island (Mr. CHAFEE), the ranking minority member of the Judiciary Committee (Mr. BIDEN), and the other Senate conferees for their efforts in achieving a satisfactory resolution of the differences between the House bill and the Senate amendment relating to section 603 of H.R. 4. Section 603 of the House-passed bill contained provisions requiring, in essence, cooperation by Federal agencies in providing "cover" for intelligence agents. Because of the concern that I and other Members of the Senate expressed regarding the potential adverse implications such a policy might have on the

Peace Corps and its historic policy of complete and total separation from intelligence activities, the Senate Judiciary Committee voted to provide an explicit exception from this requirement for the Peace Corps, thus reaffirming once again congressional support for the complete and total separation of the Peace Corps from intelligence activities.

When the Senate amendments to H.R. 4 were considered on the floor, the distinguished Senator from Rhode Island, author of the Senate bill, S. 391, offered an amendment to delete the entire section 603 with the understanding, expressed in a colloquy between myself and the Senator from Rhode Island, and a number of members of the Judiciary Committee, that the Senate conferees would insist that if section 603 was retained in the conference bill, it would include the express exemption for the Peace Corps that had been approved by the Senate Judiciary Committee.

I am pleased to report that this understanding was fully adhered to in conference. The conferees worked out an agreement which substituted, for the original House version of section 603, a provision providing merely for a report on measures taken to protect the identity of intelligence agents. This, along with language in the conference report joint explanatory statement reiterating the strong congressional support for the maintenance of the historic separation of the Peace Corps from intelligence activities, was a totally satisfactory resolution with respect to the concerns which I and other friends of the Peace Corps had regarding the House version of H.R. 4.

I greatly appreciate the adherence of the Senate conferees to their commitments and their achieving full vindication of the Senate's very strong views on this issue. I am also grateful to the House conferees for their cooperation in resolving this matter in a manner that would protect the Peace Corps from even the slightest appearance of connection to intelligence activities. I wish also to acknowledge gratefully the great courtesy of the Senators from Rhode Island and Delaware and of their staffs—especially Rob Simmons of the Intelligence Committee staff—in consulting fully with me and my staff throughout the weeks of efforts to reach a conference agreement. Their cooperation was truly remarkable and of great value to me.

Mr. President, I ask unanimous consent that excerpts of the conference report joint statement relating to the disposition of the difference between the House and Senate relating to section 603 of the House version of H.R. 4, along with a copy of a letter I sent to several of the House conferees be reprinted in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SECTION 603

The House bill contained section 603 which deals with procedures for establishing cover for intelligence officers and employees. This section required the President to establish procedures to ensure the protection of the identities of covert agents. Such procedures were to include provision for any federal department or agency designated by the President to assist in maintaining the secrecy of such identities.

The Senate struck section 603 by unanimous consent.

The conference report contains a substitute section 603 requiring an annual report from the President on measures to protect the identities of covert agents. The conferees expect such report to include an assessment of the adequacy of affirmative measures taken by the United States to conceal the identities of covert agents.

The conferees stress, however, as was made clear during consideration of this measure in both bodies, that nothing in this provision or any other provision of H.R. 4 or in any other statute or executive order affecting U.S. intelligence activites in any way diminishes the 20-year old Congressionally-sanctioned Executive Branch policy of maintaining the total separation of the Peace Crops from intelligence activities. The importance to the effectiveness of the Peace Corps of maintaining this policy and its essential components was spelled out in detail in the reports of the Senate Judiciary Committee and the House Permanent Select Committee on Intelligence and in the debate on this measure in both bodies and the conferees wish to reemphasize this point and call attention to the strong views of both bodies as set forth in that legislative history.

U.S. SENATE,
OFFICE OF THE DEMOCRATIC WHIP,
Washington, D. C., April 20, 1982.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR PETE, I'm writing to you in your capacity as a conferee on H.R. 4, the "Intelligence Identities Protection Act of 1981". Enclosed is a copy of a note I recently sent to John Chafee regarding section 603 in the House bill and the matter of the Peace Corps' being in any way connected with the concept of United States intelligence-cover activities. Also enclosed are copies of a March 1 colloquy I had with a number of Senators and of a May 4, 1981, letter from Dean Rusk on this point.

The long and the short of it is that I feel very strongly that enactment of H.R. 4 with section 603 in it (without a specific Peace Corps exception) could be potentially very damaging to the future effectiveness of the Peace Corps program. Congress has just taken steps to reinvigorate the Peace Corps by restoring its independence as a separate agency. An integral part of that independence is the maintenance of the historic, total separation of the Peace Corps from intelligence activities. In the opinion of Dean Rusk, Ed Muskie, and Cyrus Vance as well as the Senate Judiciary Committee, enacting section 603 without a Peace Corps exception would undermine that historic policy at the very time that it most needs reemphasis.

The Senate agreed to Senator Chafee's amendment to drop section 603 from the bill only with the express understanding that either that result or a section 603 with an explicit Peace Corps exception would be an acceptable result in conference. I remain fully committed to that principle, and I believe that will be the firm posture of the Senate conferees on H.R. 4.

With regard to the necessity of having a section 603 in the bill, I think it is significant that the recent Executive Order No. 12333 (section 1.6(a)) on intelligence operations deals with the obligations of Federal agencies to support intelligence activities and that the CIA does not see the need for a statutory provision to that effect. It seems to me that a statement of the conferees in the Joint Explanatory Statement accompanying the conference report on H.R. 4 (to the effect that the conferees recognize the existence of this intelligence-support provision in the Executive Order—at the same time making clear Congress' understanding that the Order in no way alters the fundamental Peace Corps separation from intelligence activities) would be a reasonable way to accommodate the differing positions of the conferees on the section 603 question.

Peter, I very much hope that you will give this matter your close personal attention and will support either deleting section 603 from the conference report (with language in the Joint Explanatory Statement along the lines I've suggested) or amending it to include a Peace Corps exception in the form reported by the Senate Judiciary Committee.

I will greatly appreciate any help you can provide.

With warmest regards.

Cordially,

ALAN CRANSTON.

Mr. BIDEN. Mr. President, I have carefully reviewed the conference report on H.R. 4 the agent's identities legislation and am pleased with the result. As a conferee on the bill I worked for the narrowest possible construction of the so-called reason to believe language. We largely achieved that goal in the conference by incorporating the so-called Durenberger colloquy into the joint statement of the managers. Therefore I signed the report but I do not feel that that obligates me to vote for passage of the bill in its final form.

In essence what we accomplished in the joint statement of the managers was to incorporate into the bill the language that Senator BRADLEY attempted to have adopted on the Senate floor requiring that the main direction of the reporter's pattern of activities must be toward naming names. It would not be sufficient under this interpretation to prove that the reporter intended to name the names by writing the story with the names or that the reporter should have known that the naming of the names in the article would jeopardize their cover.

Therefore, the conference attempted to make the reason to believe language into the intent standard. For now the Government must prove that the reporter really intended to harm the intelligence collecting apparatus of our Government by the fact of disclosure which is exactly what my amendment of the bill was intended to accomplish. Unfortunately, the Senate rejected my amendment. Furthermore, I am concerned that neither the Justice Department nor the courts will feel constrained to follow the language in the joint statement since it is mere legislative history and indeed appears to be